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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SUN MYUNG MOON AND TAKERU KAMIYAMA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR CERTIORARI TO THE
UNITED STATES SUPREME COURT

IN SUPPORT OF REVERSAL

BRIEF AMICUS CURIAE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

WILFORD W. KIRTON, JR.
OSCAR W. McCONKIE
M. KARLYNN HINMAN
DAVID P. FARNSWORTH
Kirton, McConkie & Bushnell
330 South 300 East
Salt Lake City, Utah 84111
(801) 521-3680

Attorneys for the Church of Jesus Christ of Latter-day Saints

QUESTIONS PRESENTED

Did the lower court correctly safeguard religious liberty in:

a) upholding the trial court's instruction to the jury concerning the structure of the defendant's church; and

b) permitting a jury to determine what is a religious activity under a religion's doctrines, rather than considering whether the religion's asserted doctrine was genuine?

TABLE OF CONTENTS

TABLE OF CASES v

CONSTITUTIONAL PROVISIONS INVOLVED.. v

STATEMENT OF INTEREST AND INTRODUCTION 1

SUMMARY OF ARGUMENT 1

I. THE JURY WAS IMPROPERLY INSTRUCTED IN ITS CONSIDERATION OF THE RELIGION'S STRUCTURE. 2

II. THE DETERMINATION OF WHAT CONSTITUTES A RELIGIOUS ACTIVITY SHOULD BE MADE BY THE CHURCH, NOT THE STATE, AND A CHURCH'S POSITION MAY NOT BE IGNORED IN LITIGATION ABSENT A CAREFULLY DEFINED COMPELLING STATE INTEREST. 3

CONCLUSION 8

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Written consent to file this brief has been obtained from counsel for the parties. The original letters have been sent to the Clerk of this Court for filing.

TABLE OF CASES

Feldstein v. *The Christian Science Monitor*, 555 F. Supp. 974 (D. Mass. 1983) 6

Holy Spirit Association v. *Tax Commission*, 55 N.Y. 2d 512 (1982) 2, 5

Kedroff v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952) .. 2

Serbian Orthodox Diocese v. *Milivojevich*, 426 U.S. 696 (1976) 2

Unification Church v. *INS*, 547 F.Supp. 623 (D.D.C. 1982) 2

United States v. *Ballard*, 322 U.S. 78 (1944) 6, 7

United States v. *Moon*, 718 F.2d 1210 (2d Cir. 1983) .. 3, 4

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

STATEMENT OF INTEREST AND INTRODUCTION

The Church of Jesus Christ of Latter-day Saints (the "L.D.S. Church") is an unincorporated association with headquarters in Salt Lake City, Utah. It is a Christian religion with membership exceeding five million world-wide.

The L.D.S. Church expresses no opinion about the teachings or beliefs of the Unification Church or its leader Reverend Sun Myung Moon ("Rev. Moon"). It takes no position on the matter of the guilt or innocence of the defendants and has no view as to the motivation behind or the reasonableness of the investigations that led to the indictments or the conduct of the prosecution. The defendants have raised a number of issues besides those concerning religion which they believe to be of Constitutional dimension. The L.D.S. Church takes no position on any of those other issues.

However, the instant case raises serious questions as to whether there was faithful attention paid to constitutional guarantees of religious freedom. A number of lawyers and commentators interpret the case as introducing harmful modifications to applicable standards for dealing with religions in courts of law. The L.D.S. Church is thus forced to ask whether the case can or will be construed as an unwarranted restriction upon religious freedom in this country.

SUMMARY OF ARGUMENT

The L.D.S. Church respectfully submits that this case should be reviewed by the Supreme Court because of the difficulties it presents in interpretation and the wide disparity of interpretation to which it has already been subjected. Given the nature of the case, there must be certainty that religious liberty has been properly protected, that any conviction be attained upon scrupulous attention to Con-

stitutional guarantees of religious freedom and that religions, not courts or jurors, be permitted to determine their own structure and beliefs and act accordingly without penalty, limitation or impingement, absent compelling state interests.

In their concern that the trial not be an inquisition of a religion or of an alien religious leader, the lower courts erred in jury instructions about a religion's ownership of property and its choice of structure and organization and also opened a door to government regulation, by court or jury, of religious doctrine. That door should not have been opened.

I. THE JURY WAS IMPROPERLY INSTRUCTED IN ITS CONSIDERATION OF THE RELIGION'S STRUCTURE.

It has been held that the Unification Church falls within the accepted parameters of religious entities, even though reported doctrines differ greatly from those of older or more traditional religions. *See, Unification Church* v. *INS,* 547 F.Supp. 623 (D.D.C. 1982); *Holy Spirit Association* v. *Tax Commission,* 55 N.Y. 2d 512 (1982).

Religious entities in this country and world-wide have various structures. Decisions about religious structure are, and always have been, made by the religion. It has long been recognized that religions make different arrangements regarding the administration of their temporal affairs. Courts in the past have refused jurisdiction to review such matters. *See, Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952). Internal disputes are resolved by the rules adopted and the doctrine professed by the religion itself or upon neutral principles. *See, Serbian Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696 (1976). These are salutary principles: they give maximum freedom to religious belief, and they permit individuals to adhere to groups which express their own religious preferences.

In this case, the central question was whether the church or Rev. Moon owned specified funds. Despite testimony proffered on behalf of the church as to its ownership, the trial court permitted the jury to make its own, independent determination of ownership. The jury was also permitted to exercise its own, virtually unfettered discretion in determining what the Unification Church's structure and organization should have been in order to prove the church's claim of ownership. The trial court refused to charge the jury as to the special relationship of Rev. Moon to his church; it offered only the inadequate direction that the lack of a formal corporate structure would not prevent a religious entity from having beneficial ownership of property held in the name of another. *See, United States* v. *Moon*, 718 F.2d 1210, 1244, *n.* 8 (2d Cir. 1983) (Oakes, J., dissenting).

Because it is a religious entity, it must be assumed that the Unification Church is organized in accord with its doctrines. The manner of a church's organization, if at all relevant to a case, is something for the church to describe as a threshold issue to the court; the jury should be told that a particular structure is involved, and that their only concern is whether that structure is sham rather than a genuinely established activity of the church.

II. THE DETERMINATION OF WHAT CONSTITUTES A RELIGIOUS ACTIVITY SHOULD BE MADE BY THE CHURCH, NOT THE STATE, AND A CHURCH'S POSITION MAY NOT BE IGNORED IN LITIGATION ABSENT A CAREFULLY DEFINED COMPELLING STATE INTEREST.

The very statement of the second religious issue is difficult upon the record of this case. When the majority and dissenting opinions from the lower court are compared, they are more like two ships passing in the night than a

collision of opposing views. The decisions filed by the lower court highlight a major reason for review: the issue of religious freedom lurks but does not leap, and its harm there lies.

There are few pages in the lower court decision which relate to this problem. *See, United States* v. *Moon, supra,* 718 F.2d at 1226-28. These pages do not state the issue with clarity. Careful reading of the opinions and portions of the record in the case show that the issue is real; regardless of how it was handled at trial, a jury did in fact determine the question of what was or was not a religious belief or activity of Rev. Moon's church. The jury, not the religion, decided what the religion could believe about its purposes and its activities. The court charged the jury to decide religious purpose:

> If you find that the funds in the Chase [bank] accounts were the property of International Unification Church Movement or were held in trust by Moon for the International Unification Church Movement and used for church purposes and that the interest on those funds also belong to the International Unification Church Movement and were used for it, then that interest would not be taxable income to Moon.

United States v. *Moon, supra,* 718 F.2d at 1244 *n.* 3.

In the circumstances of this case, religious belief was directly probative on the question of ownership of the funds. Like a church's structure, the nature of its activities must be inherent in and proprietary to the religion itself. Such questions should not be given unguided to a jury. The First Amendment does not permit governments or jurors to pronounce or establish religion.

The problem arises to a large extent from the conscientiousness of the trial court to exclude religion from the case, even though the doctrines and purposes of the religion

were central to a determination of (1) the ownership of the funds, (2) any wrongful use of the funds and (3) possible diversion of the funds from religious to private purposes. The result of the non-religion approach to the case was that no one was bound to consider, let alone accept, the religious teachings of the religion.

The lower court justified the approach upon the rationale that the free exercise of religion is subordinate to the criminal law. That is a general statement, but it is one too broad and unsophisticated for the crime charged because ownership and purpose could have nullified criminal conduct. The consequence here was that the jury decided what did not constitute a religious purpose, and thus decided whether there had been a crime on that predicate basis. As the New York Court of Appeals correctly stated:

> It is for religious bodies themselves, rather than the courts or administrative agencies, to define, by their teachings and activities, what their religion is. The courts are obliged to accept such characterization of the activities of such bodies, including that of the Church in the case before us, unless it is found to be insincere or sham.

Holy Spirit Association v. *Tax Commission, supra,* 55 N.Y. 2d at 527-28.

Threshold descriptions of doctrine, usage and belief given by a religion must be accorded a weighty presumption of correctness. At this point it is not necessary to argue whether the presumption should be an irrebuttable one. It is clear, however, that a court and jury should not be able to decide what is or is not doctrine as believed by a particular religion. The finder of fact cannot, unguided, substitute its views of religious purpose for those of the religion itself. This principle was demonstrated in a recent example in which the trial court, on a motion for summary

judgment, accepted the statement by church leadership that the church's newspaper, even though circulated beyond its membership, was a religious activity of the church because the church's doctrine required its membership to be informed and to read the paper. *Feldstein* v. *The Christian Science Monitor*, 555 F.Supp. 974 (D. Mass. 1983). In the instant case, the religion's description of its own purposes, activities and ownership of property were not given the benefit of any presumption whatsoever.

The flaw in the present case arises from an inversion in the appropriate analysis. The general rule is that a religious purpose cannot justify action which is prevented by a compelling state interest. The compelling state interest has defined the crime, but that test cannot be turned upon itself or used to place an unfair burden upon a religion. The logic endorsed by the Circuit was: there is a crime if there is no religious purpose, the jury says there is no religious purpose, therefore there is a crime. The syllogism should have been: There is a crime if there is no genuinely held religious purpose: the jury says the religion's stated purpose is (or is not) genuinely held, therefore there is (or is not) a crime. The jury may consider only whether the religious purpose asserted is a sincerely held religious belief. No one gave any real analysis or credence to the religion's own statements; hence the jury (and thus the government) made a prohibited determination on a religious question.

The concepts necessary to the proper treatment of religion flow from settled law, notably *United States* v. *Ballard*, 322 U.S. 78 (1944) in which this Court determined that courts (and consequently jurors) cannot inquire into the truth or falsity of religious beliefs, but may examine only the sincerity with which those beliefs are held. To hold otherwise or to permit other inquiry subjects religion and religious beliefs to the whims and prejudices of a jury, and hence would impinge improperly upon religion.

It is in this context that the lower courts have erred in their consistent and persistent efforts to keep religion outside the trial. In a normal case, the court and the jury should not consider whether the defendant is Mormon or Moslem, Adventist or atheist. Matters of conscience and religion do not ordinarily pertain. But in this case, religion was an essential element and had to be considered, but only on strict and appropriate standards set forth in the *Ballard* case. The religious dogma of the defendants and their church was crucial in determining whether there were funds which could be taxed or which could be the subject of fraud.

Under the lower court's decision, religions are left unprotected from both exercise and establishment invasions. In this case the jury adjudged both the nature and the propriety of a religion's beliefs and activities, not just sincerity. The invasions against religion were not blunt or highly visible in the instant case; they were subtle, making the precedent more pernicious and so imprecise as to multiply the case's impact. The inversion of burden upon religion, however, now has the approval of two lower courts, and that justifies a petition for review.

While religious leaders should not be permitted to manipulate the law, they should not be denied its protection. It is the role of this Court to provide the guidance and the tests and to oversee their application in cases such as this.

CONCLUSION

In order to uphold the constitutional guarantees of religious liberty assured by the First Amendment, in order to verify that proper principles have been applied, in order to prevent impingement on religion to grow from a well-intentioned but confused and improperly grounded decision and in order to provide guidance to prosecutors in situations involving possible wrongdoing by religious leaders, the L.D.S. Church respectfully requests that this Court grant certiorari to review the religious issues here raised.

Respectfully submitted,

WILFORD W. KIRTON, JR.
OSCAR W. McCONKIE
M. KARLYNN HINMAN
DAVID P. FARNSWORTH
Kirton, McConkie & Bushnell
330 South 300 East
Salt Lake City, Utah 84111
(801) 521-3680

Attorneys for the Church of Jesus Christ of Latter-day Saints

Salt Lake City, Utah
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